

28 SEP 2000



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Patent Cooperation Treaty
Legal Office

Address: Assistant Commissioner for Patents
Box PCT
Washington, D.C. 20231

John B. Matthew
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In re Application of:	:	
John B. Matthew	:	
Application No.: 09/462696	:	DECISION
PCT No.: PCT/US98/16974	:	
Int. Filing Date: 17 August 1998	:	ON
Priority Date: None	:	
Attorney's Docket No.: None	:	PETITION
For: Papermaking Refiner Plates and	:	
Method of Manufacture	:	

This is in response to the "Response" filed on 18 July 2000, which is being treated as a petition to withdraw the Notification of Missing Requirements mailed on 30 June 2000.

BACKGROUND

On 17 August 1998, applicant filed this international application. A Demand electing the United States was filed within 19 months of the priority date. Accordingly, the thirty month period for payment of the basic national fee in the United States will expire as of midnight on 17 February 2001.

On 12 January 2000, applicant submitted a transmittal letter to the United States Designated/Elected Office (DO/EO/US). The transmittal letter was accompanied, *inter alia*, the required basic national fee. The transmittal letter referred to a declaration of the inventor, but review of the record reveals that no such declaration appears to have been received.

On 30 June 2000, a Notification of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US)(Form PCT/DO/EO/905) was mailed to petitioner, requiring the submission of an oath or declaration, in compliance with 37 CFR 1.497(a) and (b) and a surcharge pursuant to 37 CFR 1.492(e). The Notification of Missing Requirements stated that "All of the items set forth in 2(a)-(d) and 3 above must be submitted within one month from the date of this notice or by 31 months from the priority date for the application, whichever is later. Failure to properly respond will result in abandonment." Thus, the required reply is due no later than midnight on 17 March 2001.

On 18 July 2000, applicant filed the instant "Response" which was accompanied by, *inter alia*, an executed declaration of the sole inventor.

DISCUSSION

Applicant asserts that a declaration was "part of the request for entry into United States national stage for this application that I mailed to the United States patent & Trademark Office on January 10, 2000. The Declaration is specifically referred to in the transmittal letter forming part of the request. It is my practice to use the cover letter as a check list prior to mailing the request to the Patent & Trademark Office, which practice was followed in this case." Review of the record reveals that applicant's assertion is the only evidence that a declaration was filed prior to the filing of the "Response" on 18 July 2000. MPEP § 513 explains that "where the records of the Office (e.g., the file of the application) contain any document(s) or fee(s) corresponding to the contents of the correspondence at issue, the Office will rely upon its official record of the contents of such correspondence in the absence of convincing evidence (e.g., a postcard receipt under MPEP § 503 containing specific itemization of the document(s) or fee(s) purported to have been filed with the correspondence at issue) that the Office received and misplaced any document(s) or fee(s) that is not among the official records of the Office." The official records of the Office fail to suggest the presence of an executed oath or declaration among the papers filed on 12 January 2000. Hence, the burden is upon petitioner to provide convincing evidence that such an oath or declaration was in fact filed on that date. As such, on the basis of the present record, the requirements set by the Notification of Missing Requirements mailed on 30 June 2000 were appropriate.

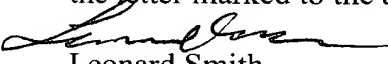
The executed declaration filed on 18 July 2000 was filed within the period for response to the Notification of Missing Requirements of 30 June 2000. However, a complete response to that Notification must include the \$65.00 surcharge under 37 CFR 1.492(e). **Applicant MUST file the \$65.00 surcharge within the extendable period for response to avoid abandonment of this application with respect to the United States.**

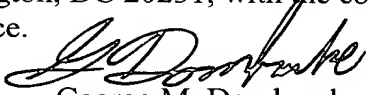
DECISION

For the reasons explained above, the petition is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition". Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, with the contents of the letter marked to the attention of the PCT Legal Office.


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